IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Summons for Judgment NO. 798 OF 2004
IN
SUIT NO. 649 OF 2004

Voltas Limited . .... Plaintiff
vs.
Kavaljit Singh and anr. ... Defendants

Sanjay Kothari a/w. Avinash Joshi
i/b. Mulla & Mnulla for Plaintiff
H. H. Trivedi for defendant

CORAM: S. U. KAMDAR J.

Date: 28/9/2005

P.C.

1. There is an agreement between the parties which had been entered into between the Plaintiff and the defendant being agreement dated 14th August 1998. Under the terms of the said written contract the Plaintiff supplied to the defendant air- conditioning unit for the total value of Rs.1,51,000/-, after adjustment of the advance payment made. According to the Plaintiff there is now due and payable by the defendant to the Plaintiff a sum of Rs.3,18,199.40. However, defendant no.2 offered a sum of Rs.1,51,000/- in full and final settlement. It is the case of the Plaintiff that the said amount has

also not been paid. Thus the suit is filed for recovery of the sum of Rs.1,51,000/-. Defendant no.1 is the owner of the theatre where the unit is fixed. It is the case of the defendant no.1 that the theatre has been given to defendant no.2 on lease. It is further contended that the said unit is not functioning properly and therefore complaint was lodged for repairing the said air -conditioning unit. It is the case of the defendant no.1 that since the Plaintiff having failed to do so and insisted on payment of balance amount there is no liability to pay the said amount. The defence raised by defendant no. 1 is totally bogus. The liability of the defendant no.1 continues and merely because a lease is given in respect of the theatre, in favour of the 2nd defendant the liability of the defendant no.1 in respect of the air-conditioning plant installed in the theatre does not cease to exist. It is not disputed that the contract lies between the Plaintiff and defendant no.1. In that view of the matter I find no defence so far as defendant no.1 is concerned.

2. Defendant no.2 is served. Admittedly defendant no.1 is the owner of the theatre. However, he contends that he has given the theatre on lease. The said period of lease has expired.

3. In my opinion, defendant no.2 is sued as the theatre, of which defendant no.1 is the owner and not in the capacity of a lessee. The

lessee has no liability. In this view of the matter I find no defence. However, learned counsel for the defendant contends that he wants to file counter claim for defective machine. There is no material to show any such complaint having been made. In that view of the matter I find the defence raised is bogus. Defendant no.1 is directed to deposit in court Rs.3,18,199.40, failing which the Plaintiff will be entitled to a decree. The amount so invested will be invested by the Prothonotary and Senior Master in fixed deposit in any nationalised bank, initially for a period of three years and renew the same from time to time till further orders.

1. If the amount is paid as aforesaid, then suit is transferred to the list of Commercial causes. Written statement or points of defence to be filed four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

(S. U. KAMDAR J.)

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